

CAUSE NO. _____

HARRIS COUNTY, TEXAS,
Plaintiff,

and the

STATE OF TEXAS
Acting by and through the Texas
Commission on Environmental Quality,
a Necessary and Indispensable Party

v.

KMCO, LLC
Defendant.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

HARRIS COUNTY'S ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
TEMPORARY AND PERMANENT INJUNCTIONS

Plaintiff, Harris County, Texas, files this Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunctions in this environmental enforcement action complaining that KMCO, LLC (KMCO or Defendant) caused, suffered, allowed, or permitted unauthorized outdoor burning and air emissions in Harris County in violation of the Texas Clean Air Act, discharged industrial waste into waters in the State of Texas in violation of the Texas Water Code, Texas Solid Waste Disposal Act, Harris County Floodplain Regulations, and Harris County Stormwater Regulations. Plaintiff seeks injunctive relief, civil penalties, costs, and attorney's fees.

1. DISCOVERY AND RELIEF REQUESTED

- 1.1. Pursuant to Texas Rule of Civil Procedure 190.1, Harris County will conduct discovery under a Level 2 Discovery Control Plan. Tex. R. Civ. P. 190.3.
- 1.2. This case is not subject to the restrictions of expedited proceedings under Rule 169

because Harris County seeks non-monetary injunctive relief and civil penalties that could exceed \$100,000. Tex. R. Civ. P. 47(c)(4).

2. AUTHORITY TO SUE

2.1. Harris County brings this cause of action by and through its County Attorney as authorized through a formal order of its governing body, the Commissioners Court of Harris County, Texas, issued on November 12, 2013.

2.2. Harris County brings this cause of action on its own behalf and on behalf of the residents of Harris County, Texas under the authority granted in §§ 7.102 and 7.351(a) of the Texas Water Code, in the Regulations of Harris County for Floodplain Management (Floodplain Regulations) Section 7.01, and the Regulations of Harris County, Texas for Stormwater Quality Management (Stormwater Regulations) Part E, Section 4.01, and Texas Local Government Code § 352.016.

3. PLAINTIFF

3.1. Plaintiff Harris County, Texas (Harris County) is a political subdivision of the State of Texas.

3.2. The State of Texas (the State), acting by and through the Texas Commission on Environmental Quality (TCEQ or Commission) is a necessary and indispensable party to this lawsuit pursuant to § 7.353 of the Water Code.¹

4. DEFENDANT

4.1. KMCO, LLC (KMCO or Defendant) is a Delaware Limited Liability Company that does business in Harris County, Texas. It may be served with citation by serving its Registered

¹ See also Tex. Water Code § 7.001(1) (“‘Commission’ means the Texas Natural Resource Conservation Commission.”); Act of April 20, 2001, 77th Leg., R.S., ch. 965, § 18.01(1), 2001 Tex. Gen. Laws 1933, 1985 (changing name from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality).

Agent, Jeff L. McFerrin, at 16503 Ramsey Road, Crosby, Texas 77532, or wherever they may be found.

4.2. KMCO owns and operates a chemical manufacturing plant at 16503 Ramsey Road, Crosby, Texas 77532 (Facility).

5. JURISDICTION AND VENUE

5.1. This Court has jurisdiction over the case and venue is proper in Harris County because this is an action to enforce Chapters 361 and 382 of the Texas Health and Safety Code and the Commission rules promulgated thereunder, Chapters 7 and 26 of the Texas Water Code, the Floodplain Regulations, and the Stormwater Regulations, and all of the events or omissions giving rise to the claim occurred in Harris County. *See Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) and Tex. Water Code § 7.105(c).*

6. APPLICABLE LAW

THE TEXAS CLEAN AIR ACT

A. The Texas Health and Safety Code

Purpose

6.1. The Texas Clean Air Act (“the Clean Air Act”) is found in Chapter 382 of the Texas Health and Safety Code. The purpose of the Clean Air Act is to safeguard the State’s air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the aesthetic enjoyment of air resources by the public and the maintenance of adequate visibility. Tex. Health & Safety Code Ann. § 382.002.

Unauthorized Emissions Prohibited

6.2. Except as authorized by a Commission rule or order, the Clean Air Act prohibits

any person from causing, suffering, allowing, or permitting the emission of any air contaminant or the performance of any activity that causes or contributes to air pollution. *Id.* at § 382.085(a). In addition, a person may not cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity in violation of Chapter 382 or of any Commission rule or order. *Id.* at § 382.085(b).

TCEQ Authorized to Adopt Rules

6.3. The Clean Air Act authorizes the TCEQ to adopt rules to carry out the intent and purposes of the Act. Tex. Health & Safety Code § 382.018. The TCEQ has promulgated rules (Commission Rules) based on that authority, found in Chapters 101-22 of Title 30 of the Texas Administrative Code.

Definitions

6.4. “Air contaminant” means “particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than normal.” Tex. Health & Safety Code Ann. § 382.003(2).

6.5. “Air pollution” means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that: (A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or (B) interfere with the normal use or enjoyment of animal life, vegetation, or property. Tex. Health & Safety Code Ann. § 382.003(3).

B. The Texas Administrative Code

Visible Emissions

6.6. “No person may cause, suffer, allow, or permit visible emissions from any source” except as authorized by the TCEQ. 30 Tex. Admin. Code § 111.111(a).

Unauthorized Outdoor Burning

6.7. Except as authorized by a Commission rule or order, the Clean Air Act prohibits any person from causing, suffering, allowing, or permitting any outdoor burning within the State of Texas. 30 Tex. Admin. Code § 111.201.

Regulatory Nuisance or Creating Air Pollution

6.8. Section 101.4 of Title 30 of the Texas Administrative Code prohibits any person from discharging from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to, or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property. 30 Tex. Admin. Code § 101.4.

6.9. Section 101.5 of Title 30 of the Texas Administrative Code prohibits any person from discharging from any source whatsoever such quantities of air contaminants, uncombined water, or other materials which cause or have a tendency to cause a traffic hazard or an interference with normal road use. 30 Tex. Admin. Code § 101.5.

New Source Review Permits

6.10. TCEQ rules require, before any actual work is begun on a facility, a person who plans to construct a new facility or engage in the modification of an existing facility which may emit air contaminants into the air to either: (1) obtain a permit under 30 Tex. Admin. Code § 116.111,² (2) satisfy the conditions for a standard permit,³ (3) satisfy the conditions for a flexible

² Control of Air Pollution by Permits for New Construction or Modification

³ 30 T.A.C. §§ 116.601 – 116.620.

permit,⁴ (4) satisfy the conditions for facilities permitted by rule,⁵ or (5) satisfy the criteria for a de minimis facility.⁶ *Id.* at § 116.110(a).

General and Special Conditions

6.11. “Acceptance of a permit by an applicant constitutes and acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the Commission issued in conformity with the Texas Clean Air Act and the conditions precedent to the granting of the permit.” 30 Tex. Admin. Code § 116.115(b)(2)(H)(i).

THE TEXAS WATER CODE

A. Definitions

6.12. “To discharge” means “to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.” Tex. Water Code § 26.001(20).

6.13. “Industrial Waste” means “waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business. *Id.* at § 26.001(11).

6.14. “Water in the state” means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside of bordering the state or inside the jurisdiction of the state.” Water Code § 26.001(5).

⁴ *Id.* at §§ 116.710 - 116.765.

⁵ *Id.* at § 106.

⁶ *Id.* at § 116.119.

B. Discharges into Waters in the State Prohibited

6.15. Texas Water Code § 26.121(a)(1) states that “except as authorized by the commission, no person may discharge sewage...or industrial waste into or adjacent to any water in the state.”

TEXAS SOLID WASTE DISPOSAL ACT

A. Purpose

6.16. The purpose of the Texas Solid Waste Disposal Act (SWDA), found in Chapter 361 of the Texas Health & Safety Code, is to provide for the “management of solid waste.” Tex. Health & Safety Code §§ 361.001-002.

6.17. The TCEQ is the administrative agency that is primarily responsible for regulating solid waste in Texas and it has adopted rules that further implement the requirements and restrictions in the SWDA. Tex. Health & Safety Code § 361.011.

B. Definitions

6.18. “Industrial solid waste” means “solid waste resulting from or incidental to any process of industry or manufacturing . . .” 30 Tex. Admin. Code § 335.1(83).

6.19. “Solid waste” means “any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations . . .” 30 Tex. Admin. Code § 335.1(146).

C. Prohibitions Against Creating a Nuisance or Endangering Public Health

6.20. “[N]o person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste . . . in such a manner as to cause:

(1) the discharge or imminent threat of discharge of industrial solid waste . . . into or adjacent

to the waters in the state without obtaining specific authorization . . . (2) the creation and maintenance of a nuisance; or (3) the endangerment of the public health and welfare.” 30 Tex. Admin. Code § 335.4.

ENFORCEMENT UNDER TEXAS WATER CODE CHAPTER 7

6.21. “A person may not cause, suffer, allow, or permit a violation of a statute within the commission’s jurisdiction or a rule adopted or an order or permit issued under such statute.” Tex. Water Code § 7.101.

6.22. Harris County is authorized to file suit for injunctive relief for violations of Chapters 7 and 26 of the Texas Water Code and Chapters 361 and 382 of the Texas Health and Safety Code, and Commission rules and orders promulgated under these statutes. *Id.* at §§ 7.105, 7.351.

6.23. Harris County is not required to pay a filing fee or other security for costs and is not required to pay a bond prior to the Court granting an injunction. Tex. Civ. Prac. & Rem. Code § 6.001.

6.24. Harris County is also entitled to recover its attorney’s fees, court costs and investigative costs in relation to this proceeding. Tex. Water Code § 7.108.

HARRIS COUNTY FLOODPLAIN REGULATIONS

A. Purpose

6.25. Harris County adopted the Regulations of Harris County, Texas for Floodplain Management (Floodplain Regulations) to “provide land use controls to qualify the unincorporated areas of Harris County for flood insurance” under the National Flood Insurance Act of 1968 and

to protect human life and health.⁷ Floodplain Regulations § 1.03.

B. Definitions

6.26. “Base flood” or “100-year flood” means a flood having a one percent chance of being equaled or exceeded in any one year. *Id.* at § 2.03.

6.27. “Base flood elevation” means the elevation or level above mean sea level that flood waters shall reach during the base flood.” *Id.* at § 2.04.

6.28. “Development” means “any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.” *Id.* at § 2.13.

6.29. “Development Permit” or “Permit” means “a permit required by these [Floodplain] Regulations.” There are two classes of Permits: (1) Class I Permits are required for any development located “on a property where the elevation of the ground is above the base flood elevation.” (2) Class II Permits are issued for any development that is “located on a property where the ground elevation is below the base flood elevation or subject to flooding.” *Id.* at § 2.37.

C. Unpermitted Development is Prohibited

6.30. “All development within the unincorporated areas of Harris County without first securing a permit is prohibited.” *Id.* at § 4.01.

D. Enforcement

6.31. Harris County may file suit, seeking an injunction to “restrain the person from continuing the violation or threat of violation, including an order directing the person to remove illegal improvements and restore preexisting conditions.” Tex. Water Code § 16.323(a)(1); *see*

⁷ The Floodplain Regulations were adopted pursuant to the Loc. Gov’t Code § 240.901; Tex. Transp. Code §§ 251.001-251.059 and 254.001-254.019; and the Flood Control and Insurance Act, Subchapter I of Chapter 16 of the Tex. Water Code.

generally, Floodplain Regulations § 7.01.

6.32. Harris County may file a civil suit for the assessment of a civil penalty of not more than \$100 for each act of violation and each day of violation. Tex. Water Code §§ 16.322 and 16.323(a)(2).

HARRIS COUNTY STORMWATER QUALITY REGULATIONS

A. Authority and Purpose

6.33. Harris County adopted the Regulations of Harris County, Texas for Stormwater Quality Management (Stormwater Regulations) under the authority derived from Texas Local Government Code, Chapter 573.

6.34. The purpose of the Stormwater Regulations is “to provide land use controls necessary to comply with Harris County’s TPDES⁸ stormwater permit, to protect human life and health and to avoid increasing pollutant levels associated with stormwater.” Stormwater Regulations, Part A, Section 1.03.

B. Definitions

6.35. “Municipal Separate Storm Sewer System” or “MS4” means “the system of man-made conveyances owned or operated by a municipality, Harris County, or Harris County Flood Control District, designed or used for collecting or conveying stormwater that discharges into Waters of the United States which is not used for collecting or conveying sewage.” Stormwater Regulations, Part A, Section 2.22.

C. Non-Stormwater Discharges Prohibited

6.36. “No person shall discharge or cause to be discharged into the MS4 anything that is not composed entirely of stormwater.” Stormwater Regulations, Part E, Section 1.02.

⁸ “‘TPDES’ means the Texas Pollutant Discharge Elimination System that was assumed by the state from the EPA pursuant to Section 1342(b) of Title 33 of the United States Code.” Stormwater Regulations, Part A, Section 2.50.

D. Enforcement

6.37. “The County Attorney may take whatever action is necessary” to remedy a violation of any section of the Stormwater Regulations dealing with Stormwater Discharges associated with Industrial Activity and/or with non-stormwater Discharges, “including but not limited to filing suit for civil penalties up to \$1,000 a day for each violation, and to enjoin the violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty.” Stormwater Regulations, Part E, Section 4.01.

TEXAS LOCAL GOVERNMENT CODE

6.38. Under Texas Local Government Code § 352.016, “in the interest of safety and fire prevention, the county fire marshal may inspect for fire or life safety hazards any structure, appurtenance, fixture, or real property located within 500 feet of a structure, appurtenance, or fixture...If the marshal determines the presence of a fire or life safety hazard, the marshal may order the owner or occupant of the premises to correct the hazardous situation. If ordered to do so, an owner or occupant shall correct the hazardous situation, in accordance with the order.” Tex. Loc. Gov’t Code § 352.016(b).

6.39. “Fire or life safety hazard” means “any condition that endangers the safety of a structure or its occupants and promotes or causes fire or combustion, including:

- (1) the presence of a flammable substance;
- (2) a dangerous or dilapidated wall, ceiling, or other structural element;
- (3) improper electrical components, heating, or other building services or facilities;
- (4) the presence of a dangerous chimney, flue, pipe, main, or stove, or of dangerous wiring;
- (5) dangerous storage, including storage or use of hazardous substances; or

(6) inappropriate means of egress, fire protection, or other fire-related safeguard.”
Tex. Loc. Gov’t Code § 352.016(a).

HAZARDOUS MATERIALS RESPONSE COST RECOVERY

6.40. Harris County is permitted to “provide limited control and containment measures that are necessary to protect human health and the environment” in instances where hazardous materials are leaked, spilled, released or abandoned on any property. Tex. Loc. Gov’t Code §§ 353.002 & 353.003.

6.41. In instances where the County responds to a leak, spill, release or abandonment of hazardous materials, or provides hazardous materials service, the County may charge a reasonable fee to offset its costs. Tex. Loc. Gov’t Code § 353.004. Those costs are chargeable to a concerned party, Tex. Loc. Gov’t Code § 353.004(a), and a concerned party is “a person involved in the possession, ownership, or transportation of a hazardous material that is released or abandoned; or [one] who has legal liability for the causation of an incident resulting in the release or abandonment of a hazardous material.” Tex. Loc. Gov’t Code § 353.001(1).

7. VIOLATIONS

A. February 6, 2019

7.1. On February 6, 2019, the Harris County Pollution Control Services Department (HCPCSD), received complaints of a strong natural gas odor near the KMCO Facility. A HCPCSD investigator responded to the complainant’s addresses and detected a sour gas-like odor of moderate strength and continuously present during an odor survey. The odor was detected downwind of the KMCO Facility, but not upwind. As a result of the odor survey, the investigator determined the KMCO Facility to be the source of the odor.

7.2. The investigator proceeded to the KMCO Facility and met with the Health, Safety,

Security, and Environmental (HSSE) Director and Manager to inform them of the odor complaints. The HSSE Director explained that a contracted vacuum truck performing routine maintenance at the Facility resulted in a release of mercaptan lasting 10 minutes. Later that day, the truck returned and there was a second release lasting approximately 5 minutes.

7.3. The investigation into the February 6 violations concluded and a Violation Notice was issued to Defendant on March 25, 2019 for violations of several Texas Clean Air Act provisions and of two previous judgments.

B. April 2, 2019

7.4. At approximately 10:45 a.m. on April 2, 2019, a line connected to KMCO's isobutylene tank began to leak. The isobutylene tank subsequently exploded, causing one fatality and at least two injuries. The explosion shook nearby buildings and the fire created an opaque, black smoke column that was visible for several hours. As a result of the fire, residents in a one mile radius of the Facility were asked to shelter in place, and four school districts sheltered in place: Crosby, Sheldon, Channelview, and Dayton ISD.

7.5. HCPCSD and the Harris County Fire Marshal's Office responded at the KMCO Facility to assist with emergency response and to investigate the fire, incurring costs.

7.6. On April 2, 2019, Defendant sprayed firefighting foam onto the fire in its Facility. On information and belief, this foam and facility-industrial wastewater discharged into or adjacent to water in the state and the MS4 from at least April 2, 2019 to April 3, 2019, and is anticipated to continue until the site is secure.

7.7. Beginning on April 2, 2019 and continuing to April 3, 2019, portions of Crosby Dayton Road and Ramsey Road were closed as a result of the fire at the Facility.

7.8. Defendant submitted to the TCEQ a State of Texas Environmental Electronic

Reporting System (STEERS) report that it caused 100% opacity conditions for one hour and 19 minutes.

7.9. The Harris County Engineering Department, Permits Division, is in the process of conducting a records review to determine if the KMCO Facility has all the permits required under the Harris County Floodplain Regulations. On information and belief, the Facility may not have requested or passed all required final inspections for development permits.

8. DEFENDANT'S VIOLATIONS OF THE TEXAS CLEAN AIR ACT, TEXAS WATER CODE, AND TEXAS SOLID WASTE DISPOSAL ACT

The following violations of the Texas Clean Air Act, Texas Water Code, and Texas Solid Waste Disposal Act occurred in Harris County, Texas:

8.1. Defendant violated Tex. Water Code § 7.101 and Texas Health and Safety Code § 382.085(a) and (b) by emitting air contaminants into the atmosphere without authorization on February 6, 2019. Each air contaminant, each emission point and each day are separate violations.

8.2. Defendant violated Tex. Water Code § 7.101 and 30 Tex. Admin. Code § 116.115(c) by emitting air contaminants in violation of air permit Special Conditions on February 6, 2019 and April 2, 2019. Each air contaminant, each emission point and each day are separate violations.

8.3. Defendant violated Tex. Water Code § 7.101 and 30 Tex. Admin. Code § 116.115(b)(2)(H)(i) by failing to comply with all rules, regulations, and orders of the commission as required by its air permit on February 6, 2019 and April 2, 2019.

8.4. Defendant violated Tex. Water Code § 7.101 and 30 Tex. Admin. Code § 101.5 by emitting air contaminants in such quantities that it caused road closures on April 2 and April 3, 2019.

8.5. Defendant violated Tex. Water Code § 7.101, Tex. Health & Safety Code § 382.085

and 30 Tex. Admin. Code § 101.4 on February 6, 2019 by causing, suffering or allowing the discharge of at least one air contaminant without a permit and in such concentration and or such duration as to be injurious to human health, welfare, or property, or as to interfere with the normal use and enjoyment of property. Two mercaptan releases caused numerous odor complaints from neighbors that an investigation determined to interfere with the normal use and enjoyment of property.

8.6. Defendant violated Texas Water Code § 26.121 from at least April 2, 2019 to present by discharging firefighting foam and other industrial waste into waters in the state without a permit. On information and belief, as of April 3, 2019, the discharges are expected to continue.

9. DEFENDANT'S VIOLATIONS OF THE FLOODPLAIN REGULATIONS

9.1. On information and belief, Defendant is in violation of the Floodplain Regulations Section 4.01 by failing to request and pass all final inspections for development. Harris County Engineering Department, Permits Division, is in the process of conducting a records review to determine if the KMCO Facility has all the permits required under the Harris County Floodplain Regulations. On information and belief, the Facility may not have requested and passed all final inspections as required under the Floodplain Regulations. The Defendant is liable for a penalty within the statutory range for each day of violation.

10. DEFENDANT'S VIOLATIONS OF THE STORMWATER REGULATIONS

10.1. Defendant violated the Stormwater Regulations from at least April 2, 2019, to present by discharging materials other than stormwater into the MS4. The Defendant is liable for a penalty within the statutory range for each day of violation.

11. INJUNCTIVE RELIEF & RESTRAINING ORDER NO BOND REQUIRED

11.1. As shown above, Defendant KMCO, LLC violated provisions of the Texas Clean

Air Act, Texas Water Code, and Texas Administrative Code on at least April 2, 2019. Defendant is also in violation of the Harris County Stormwater Regulations. Additionally, the fire of April 2, 2019 has created a potentially hazardous condition at the KMCO Facility with ongoing risk of fire hazards.

11.2. As used in this Injunction, the following words and terms set forth below have the following meanings:

- a) “Defendant” shall mean KMCO, LLC.
- b) “Fire and Life Safety Inspection” shall mean an inspection for fire or life safety hazards, as defined in Texas Local Government Code § 352.016.
- c) “Harris County” shall mean Harris County, Texas, a political subdivision of the State of Texas.
- d) “Immediately” shall mean by 5:00 p.m. Central Standard Time on the Effective Date.
- e) “KMCO Facility” shall mean the real property located at 16503 Ramsey Road, Crosby, Texas 77532.

11.3. Harris County is entitled to immediate injunctive relief from continuing violations or the threat of violations that endanger public health and safety. Pursuant to sections 7.032 and 7.351 of the Texas Water Code, this Court may grant Harris County, without bond or other undertaking, any temporary restraining order, temporary or permanent, prohibitory or mandatory injunction the facts of this case warrant. The facts of this case warrant injunctive relief prohibiting Defendant, its employees, agents, successors, and or assigns, from future violation of the Texas Clean Air Act and the regulations promulgated thereunder.

11.4. Specifically, Harris County requests a temporary restraining order immediately

directing Defendant, its employees, agents, successors, and assigns to be (1) ordered to cease all operations and not resume operations at the KMCO Facility until a Fire and Life Safety Inspection is completed by the Harris County Fire Marshal's Office, AND an independent third-party expert, as agreed by the parties and/or as appointed by the Court, completes a process hazard analysis and finds that operations meet all regulatory requirements, (2) enjoined from disposing of any wastes, including hazardous and non-hazardous wastes, fuel, fuel-based products, or any other chemicals or oils by opening the tanks where it is stored and venting substance into the atmosphere, (3) enjoined from disposing of any solid waste, unless it has been properly characterized and is disposed of at a TCEQ permitted facility authorized to accept the waste stream, (4) enjoined from spilling or discharging any waste or liquid from any container onto the ground, or into or adjacent to any waters in the state, (5) enjoined from spilling or discharging any waste or liquid from the facility into the MS4 or any water in the state, (6) enjoined from destroying any records pertaining to the Facility and from removing any business records from the KMCO Facility, (7) ordered to immediately submit to Harris County a detailed inventory of all substances, products, and materials located at the KMCO Facility, (8) enjoined from removing any inventory from the KMCO Facility without records documenting the inventory, the quantity, where it was moved, how it was moved, why it was moved, its location at the KMCO Facility, its current location, and who moved it, (9) ordered to share all water, air, and ground samples with Harris County, as well as how those samples were taken and the data analyzed.

11.5. Plaintiff also seeks temporary injunctive relief to ensure there are no future emissions and further violations of the Texas Clean Air Act, Texas Water Code, the Harris County Floodplain Regulations, or the Harris County Stormwater Regulations committed by Defendant.

11.6. Upon final trial, Plaintiff seeks that the above temporary injunctive relief be

rendered permanent.

11.7. Plaintiff also seeks temporary injunctive relief to ensure there are no future emissions and further violations of the Texas Clean Air Act, Texas Solid Waste Act, Texas Water Code, Floodplain Regulations, and Stormwater Regulations committed by Defendant.

11.8. Upon final trial, Plaintiff seeks that the above temporary injunctive relief be rendered permanent.

11.9. For any document required or permitted to be submitted to Harris County under the injunctive provisions, Defendant shall submit the document to:

Rebekah Wendt
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002
Rebekah.Wendt@cao.hctx.net

11.10. Harris County requests any additional or alternative relief deemed appropriate by this Court.

12. HAZARDOUS MATERIALS RESPONSE COSTS

12.1. Harris County requests that, upon final hearing, this Court award Harris County a reasonable fee to offset the costs it incurred in responding to the incident at the KMCO Facility, as authorized by Tex. Loc. Gov't Code § 353.001 *et seq.* The Harris County Fire Marshal's Office, the Harris County Pollution Control Services Department, and other agencies were on the scene responding to the fires and incurred costs in their response.

13. ATTORNEY'S FEES, COURT COSTS, AND INVESTIGATIVE COSTS

13.1. Harris County requests that, upon final hearing, this Court award Harris County reasonable attorney's fees and costs, to be recovered from Defendant. Tex. Water Code § 7.108; Tex. Gov't Code § 402.006(c); and Tex. Loc. Gov't Code § 113.902.

14. PRAYER

14.1. Plaintiff, Harris County, Texas asks this Court for a judgment against Defendant as follows:

- (a) That Defendant be cited to appear and answer herein;
- (b) That the State of Texas be made a necessary and indispensable party to the suit as required by law;
- (c) That the Court, after notice to the Defendant, conduct a hearing on Harris County's application for a temporary restraining order;
- (d) That the Court issue a show cause order requiring Defendant to appear before the Court to show why it should not be enjoined from further violation of the laws of the State of Texas, as set out above;
- (e) That citation issue in due form of law against Defendant;
- (f) That upon final trial a permanent injunction should issue against Defendants, in favor of Plaintiff, for the injunctive relief as aforesaid;
- (g) That, upon trial, this Court grant civil penalties against Defendant for violations of the Stormwater Regulations, within the range allowed by law, as requested above;
- (h) That, upon trial, this Court grant Harris County a reasonable fee for its hazardous materials response expenses;
- (i) That upon final trial in this cause, the Court grant Harris County its reasonable attorney's fees and that all costs be assessed against Defendant; and
- (j) That the Court grant such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

VINCE RYAN 99999939
Harris County Attorney

By: /s/ Rock W.A. Owens
Rock W.A. Owens
State Bar No. 15382100
Managing Attorney
Environmental Practice Group
1019 Congress, 15th Floor
Houston, Texas 77002
Telephone: (713) 274-5121
Facsimile: (713) 437-4211
Email: Rock.Owens@cao.hctx.net

**ATTORNEYS FOR PLAINTIFF
HARRIS COUNTY, TEXAS**

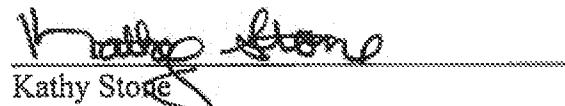
VERIFICATION

STATE OF TEXAS &
HARRIS COUNTY &
 &

Before me, the undersigned notary, on this day personally appeared Kathy Stone, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

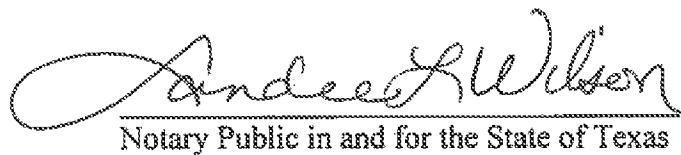
"My name is Kathy Stone. I am employed by the Harris County Pollution Control Services as Compliance Services Manager. I am capable of making this verification.

I have read the foregoing *Harris County's Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunction in Harris County, Texas vs. KMCO, LLC* and I am familiar with the facts alleged. The facts stated in Section 7, Paragraphs 7.1. to 7.8. of the petition are within my personal knowledge and are true and correct."

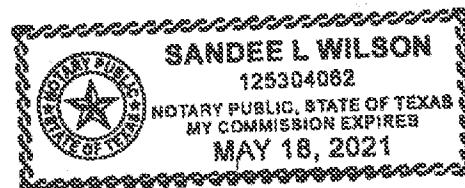


Kathy Stone

SWORN TO AND SUBSCRIBED before me by Kathy Stone on April 3, 2019.



Sandee L. Wilson
Notary Public in and for the State of Texas



VERIFICATION

STATE OF TEXAS &
HARRIS COUNTY &
 &

Before me, the undersigned notary, on this day personally appeared J. Armando Sanchez, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

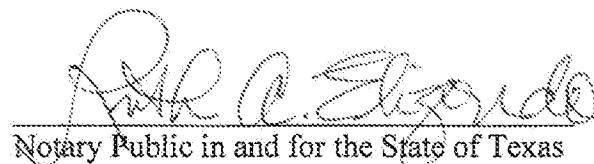
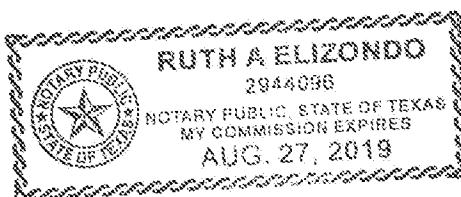
"My name is J. Armando Sanchez. I am employed by the Harris County Engineering Department as Compliance Manager. I am capable of making this verification.

I have read the foregoing *Harris County's Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunction in Harris County, Texas vs. KMCO, LLC* and I am familiar with the facts alleged. The facts stated in Section 7, Paragraph 7.9. and Section 9, Paragraph 9.1. of the petition are within my personal knowledge and are true and correct."



J. Armando Sanchez

SWORN TO AND SUBSCRIBED before me by J. Armando Sanchez on April 3, 2019.



Ruth A. Elizondo

Notary Public in and for the State of Texas